IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

CRL.A.No. 2120 of 2004

SC.662/2001 OF II ADDL. SESSIONS COURT, TRIVANDRUM
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APPELLANT: ACCUSED:

SUNIL, S/O. DEVADASAN,
PEEZHUMOODU VEEDU, VIKAS BHAVAN,
VEMBANNOOR, ARUVIKKARA VILLAGE, NEDUMANGAD.

BY ADV. SRI.THOMAS ABRAHAM

RESPONDENTS: COMPLAINANT:
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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. CIRCLE INSPECTOR OF POLICE,
NEDUMANGAD POLICE STATION, NEDUMANGAD.

BY PUBLIC PROSECUTOR SRI. K.C. SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

Crl.A.No.2120 OF 2004

Dated 7th December, 2007

JUDGMENT

Koshy,J.

Appellant in this case was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/= for the offence punishable under section 302 of the Indian Penal Code. Appellant was the accused of murdering one Samkutty. Prosecution story, as summarised by the trial Judge, is as follows:

> "A drama was scheduled to be played on the stage in the ground near to the dam sight in Aruvikkara on 27.8.1999 at about 7.30 p.m. in connection with the Onam Celebrations. On that day, the deceased Samkutty had gone to see the drama. At about 7.30 p.m. on that day, when the drama was about to begin, the accused came near to the deceased Samkutty and thereafter, the accused accosted the deceased as to whether the deceased and his father would not permit the accused to live. Thereafter, the accused stabbed Samkutty on his stomach with a knife carried by the accused, which was warded off by Samkutty and consequently, Samkutty sustained injuries on his right arm. The accused again stabbed with the same knife on Samkutty which was also warded off by Samkutty and as a result of which Samkutty sustained injuries on the left arm. The accused again stabbed on the chest of Samkutty with the same knife causing serious injuries on Samkutty and consequently, Samkutty fell down. He was taken to the Medical College Hospital in a Tempo Van. However, Samkutty succumbed to the injuries sustained on the

> chest on the same day on the way to the Medical College Hospital and thereby the accused has committed the offence u/s.302 I.P.C. It is alleged by the prosecution that Samkutty had inflicted injuries on the accused, his brothers and father on 20.05.1998 at about 2 p.m. at a place near Aruvikkara Vikas Nagar and ever since the said incident, the accused was maintaining enmity towards the deceased Samkutty. On 26.8.1999 at about 10 p.m. there was a quarrel between the deceased Samkutty and the accused at a place in Vembanoor Junction. According to the prosecution, the above said incidents constituted the motive for the occurrence."

PW1 is the father of the deceased who came to know about the sustaining of injuries by Samkutty at about 8 p.m. on 27.8.1999 through his brother-in-law. Immediately, he went to the Medical College Hospital and he came to know that his son was brought to the Medical College Hospital dead at about 8.20 p.m. Thereafter, the dead body was removed to the Mortuary of the Medical College Hospital, Thiruvananthapuram. He gave Ext.P1 statement to the police on the same day at about 11.30 p.m. Accordingly, PW12 registered the crime. PW13 proceeded to the mortuary of the Medical College Hospital and conducted inquest and prepared Ext.P4 inquest report at 9 a.m. on 28.8.1999. He also visited the place of occurrence by 3.30 p.m. and prepared Ext.P9 scene mahazar. In the 313 statement and during cross examination also case of the accused

was that he has no role in the offence. He has no enmity with the deceased and he was a friend of the deceased. According to him, he did not go to the ground where the drama was conducted. A group of people who were against conducting Onam celebrations attacked the people who were conducting celebrations and deceased sustained injuries from some of the said assailants. To prove the same he examined DWs 1 and 2.

2. PW1 is the father of the deceased. He has not seen the incident, but, he was informed that the incident took place at 7.30 p.m. and accused caused injury to Samkutty and he was taken to the Medical College Hospital. He reached there and came to know that Samkutty was brought dead. Without losing any time by 11.30 p.m. he went to the police station and gave Ext.P1 statement. It cannot be stated that there is any delay as F.I. Statement was given promptly without losing any time for popping up or foisting a case. According to the accused, PW1 or Samkutty has no enmity towards him, but, the name of the accused was stated by PW1 to the police which shows that even at that time he got information that it is the accused who caused murder of Samkutty. PW1 also deposed that about one year back there was an incident in which the deceased and his father

attacked the father and two brothers of the accused and the case was going on in the trial court. It is also stated that somebody has told him that on the previous day of the incident also there was a quarrel between the accused and deceased.

3. PW2 was examined as an occurrence witness. According to him, the incident was on 27.8.1999 at about 7.30 p.m. at a place on the southern side of the Aruvikkara Dam sight. Onam celebrations were going on in that ground. A drama was scheduled in the stage put up on the northern side of the ground. The drama was scheduled to be commenced at 7.30 p.m. He was standing on the road for seeing the drama. The deceased Samkutty was standing in front of him. At that time, accused came there and accosted the deceased Samkutty as to whether the deceased and his father would not permit the accused to live and, thereafter, the accused took out a knife from hip and stabbed at the chest of Samkutty. Samkutty warded off the said stab attack with both his hands and consequently, Samkutty sustained injuries on both his arms. Thereafter, the deceased slowly moved backwards and, at that time, accused again stabbed Samkutty causing injury on his chest and he collapsed. At that time, accused ran away from the scene. He along with others

had taken Samkutty from the ground. At that time, the policemen on duty in connection with the Onam celebrations came there and injured Samkutty was taken to the Medical College Hospital by the police in a tempo van. PW2 did not go to the Medical College Hospital. He identified MO1 knife used by the accused to inflict the injury. He also identified the dress worn by the deceased at that time. According to him, there was street light and also illuminations arranged in connection with the Onam Celebrations at the place of occurrence, apart from the light fixed in front of the stage. PWs 3 and 4 did not support the prosecution case. PW3 in fact stated that he did not go to attend the Onam celebrations. PW4 also stated that he could not see the incident. According to him, he also went there at 7 O' clock for seeing the drama. He was standing in front of the stage, but, he denied before the court his 161 statement that he has seen the incident. He also stated that he has seen the police taking Samkutty to the hospital in a tempo van. He further deposed that somebody has switched off the light, but, there was light in the stage. PW5 gave evidence to the effect that on the day before the death of Samkutty, he had seen the accused and deceased Samkutty quarrelling each other at about 9.30 p.m. He sent away the deceased and accused and thereafter they left the place. PW6 was the police

constable on duty. According to him, the first bell was rung at about 7.30 p.m. indicating the commencement of drama without delay. Accordingly there was announcement that the drama would be started soon. At that time, he saw people running towards the south-western part of the ground wherein the drama was scheduled to be played. He also reached there immediately At that time, he saw the deceased Samkutty being supported by two or three persons and blood was oozing through his body. He understood that the accused had stabbed Samkutty and, thereafter, the accused has ran away from the place. Immediately, he took the deceased Samkutty to the Medical College Hospital in a tempo van with the permission of the Head Constable on duty there. On the way to the hospital, the tempo van was stopped as Samkutty asked for water. They reached the hospital at about 8.20 p.m. and the doctor in the casualty reported that he died. Ext.P4 is the inquest report. PW13, C.I. of Police, conducted investigation at that time. He reached the Mortuary of the Medical College Hospital, Thiruvananthapuram at 9 a.m. on the next day of the incident and conducted inquest on the body of the deceased. He arrested the accused on 30.8.1999 and on the basis of the confession made by him MO1 knife used by him was recovered from the compound on the western side of Devi Temple at the instance of the

accused as per Ext.P7 mahazar at 11 a.m. on 31.8.1999. PW14 conducted investigation from 16.5.2000. He proved Ext.P12 report of the Forensic Science Laboratory. Ext.P12 would show that the blood found out in MO1 knife was human blood, but, it was insufficient to determine the group.

4. DW1 was examined to show that telephone facilities were available near the place and suggests that PW6 could have telephoned the matter to the police station immediately after the incident. According to DW2, at the time when drama started lights were switched off and there was an attack by about 10 to 25 persons who were against the conducting of Onam celebrations. Samkutty was sitting in front of DW2. Immediately on switching on the lights, the assailants left the place and at that time Samkutty was seen with injuries on his body. Thereafter, the Sub Inspector of Police also came there in a jeep after getting telephone call from the Head Constable on duty there. But, unlike PW2, DW2 was not able to tell the name of the drama scheduled to be played there. He also stated that he is not aware who inflicted injuries and how Samkutty got injuries. The trial court after considering the evidence disbelieved him totally.

5. Now, we will come to the medical evidence. PW8 doctor conducted postmortem and issued Ext.P5 postmortem certificate which shows the following ante-mortem injuries:

> "1. Incised penetrating wound 4.8 x 2 cm. horizontally placed on the front of the middle of chest with the right sharply cut end 2.4 cm to the right of midline and 9cm below collarbone. The other end was blunt. The wound entered the chest cavity, by cutting, the right three fourth of the sternum and the adjoining costal cartilage of third rib of right side, incised the right atrium along the right border (exposing the camber) and terminated in the upper lobe of right lung. The tract was directed backwards, downward and to the right and the total minimum depth was 6.2cm. The right chest cavity contained 1250 ml blood and the lung was seen collapsed.
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> 2. Incised wound 2.5 x 1 x 2 cm, obliquely placed on the right side of chest with its lower back end 15.5cm below the back fold of armpit.
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> 3. Incised wound 4.5 x 2 x 1cm obliquely placed on the back of right arm with its lower outer end 9cm. above elbow.
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> 4. Incised wound 4 x 1.5cm obliquely placed on the back of right forearm with its upper inner sharply cut end, 5cm below the elbow. The other end was blunt.
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> 5. Incised wound 3 x 1cm obliquely placed on the front of right forearm with its upper inner sharply cut end, 2cm below the elbow. The other end was blunt.

Injury NO.4 and 5 were seen communicating with each other. The length of the track was 6.8 cm and the direction from injury No.1 to 2 was upwards and forwards.

6. Incised punctured wound 3.5 x 2 x 4.8cm obliquely placed on the outer aspect of left arm with its lower front sharply cut end 10 cm below top of shoulder. The other end was blunt. The wound terminated in the periosteum or humerus bone and the track was downwards and to the right."

According to the doctor, cause of death was the penetrating injury sustained by him on his chest and injury No.1 is sufficient in the ordinary course of nature to cause death. It is further stated that injury Nos. 2 to 6 in Ext.P5 can be caused while warding off a stab attack aimed at the chest. His further evidence shows that alla the injuries in Ext.P5 could be caused with MO1 knife. PW8 also proved Ext.P6 certificate issued by the Chemical Examiner to the Government of Kerala after analysing the blood sample of the deceased. Ext.P6 shows that the blood contained 115 mgms of Ethyl Alcohol in 100 millilitres of blood. PW8 also stated that quantity of ethyl alcohol present in the blood of the deceased is not sufficient to cause intoxication.

6. It is the case of the appellant that only on the basis of the evidence of PW2, the solitary eye witness, conviction cannot be entered into. It is stated that he was not telling the correct facts. At 7.30 p.m. when the first bell was rung all the lights were switched off and then he could not have seen accused or anybody stabbing Samkutty. But, the evidence shows that when the first bell was rung, there was street light and even if the light in front of the stage was switched off there cannot be complete darkness. There were dim lights and it was conducted in an open place and PW2's case is that deceased was standing in front of him. It is not the quantity of evidence that is to be considered, but, the quality of evidence is to be considered. Evidence has to be weighed and not counted. The trial Judge who saw the demeanour of PW2 found him totally reliable. As held by the Supreme Court in **Jose** v. **State of Kerala** (AIR 1973 SC 944) if the solitary eye witness is trustworthy, conviction can be entered on that basis. PW2's evidence is supported by the medical evidence. The doctor has deposed that the injuries can be caused by warding off stab attack and the deposition of PW2 was also that first attack was warded off by the deceased using his hands. PW2's evidence is further supported by the additional facts that MO1 knife was recovered on the basis of the disclosure of A1, MO1 knife

contained human blood and the doctor deposed that all the injuries including fatal injuries can be caused by MO1. We are also of the view that the motive was also established by the prosecution as it is now disputed that a criminal case was pending at that time regarding the attack made by the deceased and his father against the father and brother of the accused. On the previous day also a similar incident was occurred as deposed by PW5. The fact that the F.I. Statement given by PW1, who came immediately after the incident, also shows that on his arrival at hospital he came to know from the people that incident occurred that the appellant has caused injuries. PW6 police constable also stated that when he arrived immediately after the incident he came to know that accused has inflicted injuries to the deceased and the deceased was lying on the ground with bleeding injuries on his body. The totality of the evidence would show that it is the accused and accused alone has inflicted the injuries on the deceased. Why people objecting Onam celebrations attacked the deceased as alleged by accused is not explained as deceased is not an organizer of the celebration committee. If somebody has got objection in the manner in which Onam celebration was conducted, there is no need to inflict injury on the deceased alone. Previous enmity between accused and deceased was proved in

this case. Deceased, accused and witnesses were all local people and there is no difficulty in identifying the people. A reading of the evidence as a whole would show that the finding of guilt by the trial court is fully justified. Only life imprisonment was imposed on the accused which is the minimum punishment for an offence punishable under section 302 of the Indian Penal Code. In the above circumstances, we see no ground to interfere in the conviction and sentence passed by the trial court. However, we make it clear that if sentence in any case is commuted, he will be entitled to the right of set off as provided under Section 428 of the Code of Criminal Procedure.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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